D. Jardine

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# REMARKS

ON THE

# LAW AND EXPEDIENCY

OF REQUIRING THE

# PRESENCE OF ACCUSED PERSONS

AT

# CORONERS' INQUISITIONS.

BY

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# PREFACE.

THE following remarks were written several months ago, when the claim which forms the subject of them was strongly urged upon the attention of the public by one of the Coroners of Middlesex. Two judicial decisions, adverse to the claim, and an official letter to the same effect from the Secretary of State for the Home Department, in answer to an application from the Coroner, seemed to have set the question at rest; and it was thought that no good purpose could be gained by renewing a controversy which had been apparently closed by the declared opinion of competent authorities.

The claim has, however, been re-asserted by the same Coroner, on occasion of an inquest recently taken by him at Kensington; and the jury, after being addressed at great length by him on the subject, refused to return any verdict of accusation, declaring, as the reason of their refusal, that they were prevented from discharging their proper functions by the conduct of the magistrate and the police, in wilfully withholding the accused parties

from the inquest. In this particular instance no inconvenience arose from the absence of a verdict, as the accused had already been committed for trial by a magistrate; but cases may readily be conceived, and may probably occur, in which justice may be evaded, and all the advantage which can be derived from an inquest may be lost, by the prevalence of such an impression among that class of persons from which Coroners' juries are usually taken. Considering, therefore, that the question has not been finally disposed of by the authorities above-mentioned (which indeed do not profess to decide directly the abstract point) it may not be wholly without use to the administration of justice, as connected with an important institution, to lay before the public the arguments by which my own mind has been brought to the conclusion that the claim advanced by the Coroner is without foundation in law or reason.

January, 1846.

# REMARKS,

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The claim advanced on several recent occasions to the production of persons accused of homicide before the Coroner's inquest, is certainly deserving of consideration and inquiry. To lawyers such a discussion may possibly appear superfluous; as men of forensic education, and all who are minutely acquainted with the history of our criminal law, can hardly fail to perceive the inconsistency of the Coroner's claim in this respect with the principle of his jurisdiction. But it is probable that many who have only a general knowledge of the subject, may consider it to be a just and reasonable proposition, that the accused should be present in all cases before the inquest; and consequently, that, if the law does not now authorize the practice, it is imperfect in this respect, and requires amendment.

With a view to remove erroneous impressions upon a subject of some practical importance, I propose briefly to consider this question with reference to the proper object and duties of the

Coroner's inquisition, as defined by long usage and various statutes.

Some misapprehension has arisen from confounding the modern character of the Coroner's office with its incidents in times of remote antiquity, long antecedent to the establishment of justices of the peace, and when police and criminal procedure were in conformity with the rude state of society which then existed. The high antiquity, and the original dignity and importance of the Coroner's office, are unquestionable. The Coroners of a county are supposed to be the officers who, in the reigns of Richard I. and John, are often mentioned under the names of "Milites Provinciales," "Custodes Placitorum Coronæ," or "Milites custodientes Placita Coronæ."* And although their precise functions and the mode in which they exercised them are uncertain, there is no doubt that originally they were not only important ministerial officers, and ordained with the Sheriffs to keep the peace in their respective counties, but that they were invested with extensive judicial authority in criminal matters. But their power to try and punish crimes was entirely abrogated by a clause in Magna Charta, which restricted them altogether from holding pleas of the Crown; and the effect of this enactment was to reduce their office to nearly the same state in point of jurisdiction in which it exists at the present day. Bracton, who wrote about the middle of

* Reeves's History of the English Law, vol. i. p. 202.

the reign of Henry III., describes the duties of the Coroner in terms almost identical with those employed to describe them in modern times; and the stat. 4 Edw. I. (De Officio Coronatoris) is still the governing law upon the subject, and is accordingly adopted in Burns' Justice and all recent text books. Let us now examine of what these duties consist in cases of homicide, and what is the precise object to be attained by their performance.

The law requires the Coroner to "go to the place where the body of a person slain, or suddenly dead, is lying; and forthwith to command a jury to appear before him. And when the jurors shall have come, the Coroner, by their oath, shall inquire in the case of a man slain, where he was slain,—whether it was in a field, or in a house, or in bed, or in a tavern, or in a company, and who were there. In like manner it is to be inquired who were guilty, and in what manner, and who were present. And as many as are found guilty by the inquisition are to be taken by the Coroner, and committed to gaol for future trial. And he is also to inquire concerning their lands, goods, and chattels, which are forfeited thereby; and whether any deodand has accrued to the King or the lord of the franchise by the death." And upon the conclusion of the investigation, he must return the whole of this inquisition, together with the evidence thereon, to the justices of the next gaol delivery.*

* 3 Hen. VII. c. 1.

The general scope and character of the duties here enumerated are, inquiry. The Coroner is merely to inquire into a variety of circumstances connected with the death, and to present to a superior tribunal the result of the inquiry as declared by the jury, together with the evidence upon which it is founded. And there, in cases of homicide, his duties are at an end. "His authority," says Lord Coke,* "is solely to take an indictment *super visum corporis*; but he can proceed no further but to deliver it over to the justices." Although directed by the terms of the law to inquire who were guilty of the death, it is clear that he has no power to punish; —it is equally clear that no power is expressly given to him to cite a supposed offender before his inquest; and it would appear from the language of the statute, which speaks of "taking" persons who are "found guilty" by the inquisition, that their presence is not essential to the regularity of the proceedings, and that their absence is contemplated as the usual case.

Nor is it essentially necessary that the inquest should present any person as the offender. The point of the Coroner's inquiry is the *manner* of the death; and accusation or charge is not, and never was, the primary object. In this respect the proceeding differs materially from inquiry by a magistrate, by a grand jury, or by a jury for trial. In each of these latter inquiries, the question to be

* 2 Inst. 32.

determined is, whether an individual specifically charged by name before these respective tribunals is guilty or not guilty; and this question must of necessity be solved by them. Whereas, the Coroner having ascertained that a death has been occasioned by culpable homicide, is merely to inquire who is guilty; and it may happen that no evidence can be given to enable the jury to answer that inquiry. "The proceeding before the Coroner," says Lord Tenterden in the case of Garnett v. Ferrand,* "is a preliminary inquiry, which may or may not end in the accusation of a particular individual." "The Coroner's inquest," says Lord Hale,† is to inquire truly *quomodo ad mortem devenit*, and is rather for information of the fact as near as the jury can assert it, and not for an accusation." And in another part of the same book he repeats that "It is not so much an accusation or an indictment, as an inquisition or inquest of office, *quomodo T. S. ad mortem devenit*, though it be true that an offender may be arraigned upon that presentment."‡ And in conformity with this doctrine, it is the daily and familiar practice that the Coroner's inquest, having ascertained by evidence the manner of the death,—such as murder or manslaughter, according to circumstances,—closes without any particular accusation, by returning a verdict against some person "to the jurors un-

* 6 Barn. & Cress. 611.

† Hale's Pleas of the Crown, vol. ii. p. 61.

‡ Pleas of the Crown, vol. ii. p. 57.

known,"—thus fulfilling the primary object of the institution, and leaving the secondary object, viz. the discovery and apprehension of the offender, to be effected by other authorities to whom the law has given powers and machinery proper for the purpose. On the other hand, no doubt when the evidence indicates a particular individual as guilty of the death, the jury must return their verdict accordingly, and upon that verdict, which has then the force of an indictment, the accused must be tried by a superior court, the Coroner being required to commit him to gaol, and also to compel the attendance of the witnesses to give evidence upon his trial.

Practically speaking, however, the presentments of the Coroner's jury have long been of little importance as indictments. Lord Hale* declares that in his time "Coroner's inquests were, for the most part, insufficient;" and at the present day it is extremely rare to find an inquisition which does not contain some fatal error, either in form or in substance. The technical nicety requisite in framing indictments of homicide presents difficulties which, even where the Coroner has had a legal education, are seldom overcome without professional assistance; and in order to avoid the failure of justice, which would frequently arise from errors in the inquisition, it has for more than a century been the practice to prepare bills of indictment at Gaol Deliveries, where experienced draftsmen always at-

* Pleas of the Crown, vol. ii. p. 222.

tend; upon which indictments, together with the presentment of the Coroner's jury, (if both present the same offence,) the accused is eventually arraigned. The trial, however, always takes place first upon the indictment by the grand jury; and consequently it very rarely happens that the accused takes his trial upon the Coroner's inquisition alone.

It has been attempted to deduce an argument for the presence of the accused at an inquest from the fact that the Coroner possesses the power of arresting a suspected person during the progress of the inquiry before his jury, and previously to their giving a verdict. This opinion is founded upon a statement made by Lord Hale,* that "it was the common usage in his day, for the Coroner to take manslayers before their inquisition be taken; for many times the inquest is long in their inquiry, and the offender may escape if he stays till the inquisition be delivered up." It is remarkable, that an usage which Lord Hale declares to have been common in his day, should have entirely disappeared in the course of the two centuries which have elapsed since he wrote: for I apprehend that there is no trace of such a practice in recent times. Nevertheless, the opinion that the Coroner by law does possess such a power, is warranted by good authority. There is no question that the Coroner, as well as the Sheriff, and upon the same principle, has power to arrest all felons within his county. The

* Pleas of the Crown, vol. ii. p. 107.

origin, nature, and object of this power have, however, been much mistaken. It is not derived from the Statute De Officio Coronatoris, by the express words of which the Coroner is only authorised to take such persons as are "found guilty" by the inquisition; but it is given, or rather recognized, by the statute 3 Edw. I. commonly called by legal writers, the "Statute of Westminster, 1." cap. 9., which enjoins all Coroners, and Sheriffs, as conservators of the peace at common law, to arrest felons at the peril of fine and imprisonment.* Consequently, if it should appear to a Coroner in the course of taking an inquisition of death, that a felonious homicide has been committed, and that the offender is likely to escape before the jury have given their verdict, he would be justified, by the requisition of this statute, in issuing a warrant for his apprehension, or by the common law, in apprehending him without a warrant,—not for the purpose of bringing him before his inquest, but in order to commit him to gaol until discharged by course of law. And Lord Hale, in the passage in which he mentions the common exercise of this power in former times, is commenting upon this statute, and expressly refers to it as the foundation upon which the usage rests. It is not, therefore, to be assumed, that the ancient and acknowledged power of the Coroner to arrest felons, authorises him to take the persons arrested before his inquest. His authority

* Hale's Pleas of the Crown, vol. ii. p. 88.

to take felons is general, and is precisely the same as that of the Sheriff of a county; whereas, his power to hold an inquisition and to apprehend an offender upon the verdict of his jury, is not only more circumscribed in extent, but is derived from a different source, and depends upon a different principle.

Had the Coroner possessed the power of arresting a suspected person in order to bring him before his inquest, forms of warrants issued by him for that purpose would be found in the various practical books which have been published on the office and duties of Coroners. Umfreville's Lex Coronatoria is not a work of high legal authority; but the writer was for many years one of the Coroners for the County of Middlesex, and appears, by the statement in the preface to his work, to have taken great pains to inform himself respecting the practical duties of the office. He is very particular in enumerating all the powers and authorities which he conceived to belong to Coroners, but he never mentions the power which has been recently claimed. The Lex Coronatoria also contains numerous forms of warrants and summonses to compel the appearance of witnesses and others before the inquest; but neither in that work, nor in any other book on the office of Coroner with which I am acquainted, nor in any collection of forms, ancient or modern, is any precedent to be found of a precept, warrant, or other process from a Coroner, requiring the attendance at

his court of a person accused of homicide. The absence of all forms of process is in itself a strong argument against the existence of the supposed power.

The Coroner's inquest is designated by Lord Hale, in one of the passages above cited, as an inquest of office. Lord Kenyon, also, in the case of Rex v. Eriswell,* says "The examination before the Coroner is an inquest of office;" and it is frequently so described by the judges in discussions relating to the incidents of the Coroner's jurisdiction. Now an inquest of office, according to Cowell,† is "an inquisition made to the King's use of anything by virtue of his office who inquireth;" in other words, it is a proceeding instituted and conducted *ex officio*, and without any special directions, by a public officer, for the purpose of ascertaining facts in which the Crown is supposed to have an interest. And in consistency with this definition, the statute De Officio Coronatoris, by its particular enumeration of the Coroner's duties in cases of homicide, shows that the proceeding was in principle and character an inquest of office, the main object of the inquiry being to ascertain and record the facts and circumstances of a sudden death, with a view to secure the forfeitures to which the Crown might thereby become entitled. For the attainment of this object it was essential to determine the manner of the death. Where the homicide is excusable or justifiable by law, and where the death happened *per visitationem*

* 3 Term Rep. 707. † Cowell's Interpreter, *tit.* Office.

*Dei*, no forfeiture resulted; but upon a verdict of *felo de se*, the goods and chattels of the deceased were at once forfeited to the Crown; and if the jury found that the death resulted from murder or manslaughter, forfeitures of lands, goods, and chattels, accrued to the Crown upon the subsequent conviction and attainder of the offender. In early periods of our history, these forfeitures formed an important part of the casual revenues of the Crown, and were consequently collected and enforced with the greatest care and rigour. Thus the Coroner, as the King's officer, by his inquisition ascertained the forfeitures in which the Crown had an interest, and secured their ultimate possession as a part of the prerogative revenue. This service, however, consisted almost entirely of inquiry respecting the manner of the death; and in this part of his duty the Coroner had no judicial authority, and the verdict of his jury had no binding effect whatsoever upon any of the various subjects to which it was applied. No forfeiture could be enforced upon the mere finding of a felonious homicide by a Coroner's jury; and the only effect of that finding was to inform the Crown of its inchoate title to the forfeitures, and to authorize the Coroner to secure the person of the supposed offender, in order that, by his subsequent conviction and attainder in a court of competent jurisdiction, the title of the Crown might be eventually completed. Even with respect to a verdict of *felo de se*, which was at one

time supposed to vest the goods of the suicide at once and absolutely in the Crown, it is now clearly established that the personal representatives of the deceased may traverse the proceedings, and show, by evidence to another jury, that the verdict of the Coroner's inquest was contrary to the fact.* "Nothing that is done at the Coroner's inquest," says Lord Tenterden in the case of Garnett v Ferrand, "will be conclusive upon the party to be affected by it; all is traversable." And the reason and foundation of this rule, which is an essential condition of all inquests of office, is that the party is absent,—that in law he has no *locus standi* in court, to defend or to answer, and consequently, that, on the principles of natural justice, he ought not to be bound by an inquiry taken in his absence.†

* 1 Saund. 362, n. 1, and the case of Garnett *v.* Ferrand; 6 Barn. & Cress. 611.

† This distinction between inquisitions *ex officio quæ non ligant partes* and inquisitions *quæ ligant partes et decidunt inter eas*, and the reason upon which it rests, namely, the absence of the party, are of very ancient date in the law of England. In the great litigation between the Earls of Hereford and Gloucester, in the reign of Edward I., the subject was largely discussed; and although it was contended that a party who had been summoned to attend the inquisition and might have appeared and answered, but who made default, might, in some cases, and for some purposes, be bound by the finding of the jury; yet it was admitted, without doubt or question, that the decision of a mere inquest of office could not in any way affect the rights of a person "*qui nunquam posuit se in inquisitionem illam.*"—Rolls of Parliament, vol. i. p. 75.

If then the Coroner's inquisition is an inquest of office, it is inconsistent with the character of the tribunal that an accused or suspected person should take any part or even appear in the proceedings.

The preceding remarks upon the character of the Coroner's inquisition as an inquest of office are only important as showing that at an early period of its history, and in principle, it could not have been regular that accused or suspected persons should have been present at the proceedings; but as the nature of the institution has undergone a total change with advancing civilization, and particularly as its fiscal objects are now become nearly a dead letter, in consequence of the substitution of more rational sources of the Crown revenue than forfeitures, I do not propose this view of the subject as entirely convincing and satisfactory. The substantial question relates to the things *quæ nunc sunt*, and not to those *quæ olim fuerunt*; and there is no doubt that the Coroner's inquest at the present day is to be considered not so much as an inquest of office for the Crown, as a proceeding the main object of which is to promote the detection and punishment of crimes affecting the life of man. I therefore now proceed to inquire, upon more general principles of reasoning, in what character, or with what object, and at what particular point or stage of the inquiry before the Coroner, an accused or suspected person can advantageously or properly be introduced before the jury.

The first question that arises on this view of the subject is,—when and how, in such a proceeding as a Coroner's inquisition, is a particular individual sufficiently marked with the character of a suspected or accused person to justify his compulsory appearance as a party before the Coroner and his jury? Here the distinction between the Coroner's inquest and other inquiries of a criminal nature again presents itself. A magistrate deals with an individual who is in actual custody, and is distinctly charged before him; the grand jury dispose of a bill of indictment preferred against an individual by name; and the petty jury try an individual named in the indictment and personally brought before them. In all these cases *constat de personâ*;—the individual to whom the inquiry relates is clearly pointed out from the beginning, and the whole proceeding refers to him and him only. But the Coroner is merely to inquire how the deceased came by his death, and who was guilty of it; not whether any particular and designated person was guilty. All that is known to the Coroner and his jury when they commence their inquiry is that which they are imperatively bound to ascertain by personal inspection of the dead body, namely, that a man has been slain, or is suddenly dead. Then they are to begin to feel their way towards the light by investigating the various minute circumstances directed in detail by the ancient statute; for instance, "where the deceased was slain; whether it was in a field, or in a house, or in bed, or

in a tavern, or in a company, and who were there; also who were guilty, and in what manner, of the fact or of the force, and who were present; also if found in the fields or woods, whether he was slain there or not, and if brought thither, they are to follow the footsteps of such as have brought him, or the tracks of the horse or cart in which the body was carried, and to find out where he was entertained the preceding night." Inquiries of this kind, varying of course in their nature and extent, according to circumstances, must at first be made in every case, and therefore more or less evidence must have been given, and the proceedings must have made some progress, before any person can be said to be suspected or accused, and consequently before any person can appear before the inquest in that character.

Let us suppose, then, that in the course of investigating the causes of the death, evidence has been given tending to criminate a particular person, who is thereupon cited to attend. Upon his appearance, the testimony previously given must of course be repeated in his hearing, or his presence is nugatory. Even this would often occasion embarrassment and delay in a proceeding which, above all others, requires promptitude and dispatch. But in obscure and doubtful cases, it constantly happens that the vague and ambiguous voices which are scattered among the common people on occasions of violent death raise groundless suspicions and accusations,

and thus many persons are implicated by the evidence as it proceeds. Are all these persons to be successively cited?—and is the testimony of the witnesses to be severally repeated to each of them? If so, the proceedings might be interminable—not to mention the endless inconvenience, vexation, and confusion, which must result from such a course. For this reason alone, it can hardly be contended that the law authorizes, or ought to authorize, the compulsory appearance of persons as *parties* before the Coroner's inquest, whom particular witnesses may charge by their testimony, or to whom, at particular stages of the inquiry, suspicion may attach. Accurately speaking, no man can be said to be accused before the Coroner until the verdict of the jury has been given. The jury are to accuse, if satisfied of the truth of the facts stated by the witnesses; but it is an entire misapprehension of the character and object of the proceeding to suppose that the witnesses accuse, or that the Coroner and his jury try. The facts adduced in evidence may raise strong presumptions against an individual, or may amount to direct proof of his guilt;—in either of which cases the jury may properly and legally accuse him by their verdict. Their verdict is the accusation; and when that accusation has been made, or when, in the language of the statute De Officio Coronatoris, the party has been "found guilty" by the inquisition, he is to be "taken and committed to gaol," in order that he

may be produced before a Court which has authority to arraign and try him upon that accusation, and to punish or discharge him, according to the final determination of the facts by another jury.

Let us, however, consider the case in which this difficulty would not arise. We will suppose a person already in the custody of a constable,* on suspicion of felonious homicide, while the Coroner and his jury are sitting upon the body of the deceased. In such a case there is doubtless an accused and suspected person, already ascertained. But a serious question here arises, involving dangerous consequences, if a mistake should be committed, namely, whether a constable would be justified or protected by the law, as it now stands, in taking his prisoner in such a case before the Coroner's inquest. I apprehend that no point of practical law can be more clear from doubt than that it is the duty of a constable, whether he arrests upon his own suspicion, or upon the charge of another person, to take his prisoner as soon as he reasonably can before a justice of the peace for examination.† The law allows

* As some of this reasoning is founded upon the legal authority of constables, it is perhaps necessary here to state that constables belonging to the Metropolitan Police Force, and those acting in boroughs under the provisions of the Municipal Corporation Act, are subject to the same duties and responsibilities in all respects as constables at common law.—See Statutes 10 Geo. IV. c. 44, s. 4, and 5 & 6 Will. IV. c. 76, s. 76.

† Wright v. Court and others, 4 Barn. & Cress. 596.

him no discretion in this matter. He is not permitted to confine or restrain his prisoner in any manner, except for safe custody until he can be taken to a justice of the peace, to be bailed, committed, or discharged; and I know of no authority and no usage which would empower him to except from his general duty in this respect cases of arrest for felonious homicide, or justify him in taking his prisoner in such cases before the Coroner. For it must be remembered, that although the Coroner may be a conservator of the peace at common law (if such an office can be said to exist at all at the present day),* he is not a justice of the peace. Lord Camden, in the case of Entick v. Carrington,† says that "a justice may perhaps be a conservator, but a conservator is not a justice." Now it is a justice of the peace to whom alone, according to all the authorities, a constable is bound to deliver his prisoner. And even if it were lawful for him to bring his prisoner before the Coroner in his character of a conservator of the peace, in order that he might commit him to gaol, under the authority of the Statute of Westminster, I. cap. 9, the constable would not be justified in bringing the

* Lord Camden, in his celebrated judgment in the case of Entick v. Carrington, Howell's State Trials, vol. xix. p. 1061, seems to consider the office as virtually obsolete, saying, "the keeping of the peace is so completely transferred to and engrossed by justices, that the name of conservator is almost forgotten."

† Howell's State Trials, vol. xix. p. 1060.

prisoner to the Coroner's court, when he is sitting with his jury *super visum corporis*, in the exercise of a totally different jurisdiction.

The practice of taking a person who is in custody on a criminal charge, in all cases, and exclusively, before a justice of the peace, seems to depend in some measure upon the following obvious and well recognized distinction. A prisoner charged with felony is taken before a magistrate for the purpose of *being examined,* and in order that, upon such examination, he may be either bailed, committed for trial, or discharged. Now the law expressly assigns the duty of examining offenders to a justice of the peace, but it neither authorizes nor permits the performance of this duty by a Coroner. By the stat. 7 Geo. IV. c., 64, s. 2, justices of the peace are in terms directed, to take the examination of persons arrested for felony or suspicion of felony. Whereas by the fourth section of the same statute, which relates to the Coroner's inquisition, that officer is merely directed to "put in writing the evidence given to the jury before him," and no authority is given to examine the accused. And this distinction is drawn precisely in the same manner by the ancient statutes, 1 and 2 Phil. and Mary, c. 13., and 2 and 3 Phil. and Mary, c. 10, by which justices and Coroners were first required to take written depositions. In modern times indeed, magistrates in accordance with a certain refinement of humanity, which has sprung up in the administration of the criminal

law since the Commonwealth, abstain from asking questions of prisoners, although expressly required by the statute to take their examinations; but in the days of Philip and Mary, when these provisions were first enacted, and long afterwards, no such delicacy was felt, and it was usual to examine accused persons at great length and with much severity, in order to extract confessions from them, which afterwards often constituted the most important evidence against them upon their trials. Now, if, in those times, it was the practice to bring persons charged with homicide before a Coroner, it can hardly be supposed that express authority would not have been given him to take their examinations. But he has no authority of this kind, express or implied, either by the common law or by statute, and there is not a vestige of such a duty having ever been performed by him. On the other hand, the practice of bringing offenders before justices of the peace for examination has been uniform and invariable, from the time of Edward I. to the present day.

If then it is the duty of a constable to take before a justice of peace a prisoner arrested by him for murder or manslaughter, it follows, that by taking him before the Coroner, or any other unauthorized person, he would not only be himself chargeable in case of an escape, but would forfeit his right to the special protection of the law should the prisoner forcibly resist him. Moreover, the prisoner, while

before the Coroner, would not be in lawful custody, and might lawfully regain his liberty by force, or he might maintain an action against the Coroner and constable if they detained him.

Let us now suppose that the case has proceeded a step further. Let us suppose that the prisoner has been brought by the constable before a justice of peace, and after examination, has been either finally committed by him to gaol to take his trial, or remanded for further examination. After a careful search, I cannot discover any authority in any law-book or statute, ancient or modern, nor any traces of an usage at any period of the history of the English law, which would justify the gaoler in bringing his prisoner before the Coroner. Nor can any satisfactory reason be given for removing him to the Coroner in either of these cases. In the case of a commitment for trial the accused is already in safe custody, and the examination and depositions have already been returned by a competent authority to the court which has to try him; and it seems impossible to suggest any valid reason why this process should be repeated before the Coroner. In the case of a commitment for re-examination, the facts are in a course of investigation before a competent tribunal, and it is obvious that the purposes of justice might often be defeated by interrupting an inquiry already begun by a justice of the peace. But in both these forms of commitment, the conclusive reason against removing the prisoner from gaol

to the Coroner's court, is, that the gaoler is bound by law to keep his prisoner in *arctâ et salvâ custodiâ;* and unless it can be shown that a removal to that court is an exception to the general rule, (for which proposition I have been unable to discover any authority in the law,) he is guilty of an escape in sending a prisoner out of the gaol for that purpose,—even although he remain all the time in the hands of a keeper, and is eventually brought back to the gaol; and it is to be noticed, that where the prisoner has been committed for murder or manslaughter, the gaoler himself for such a removal would be liable to a prosecution for felony.*

It is material here to notice the grievous inconvenience which would attend the practice of transmitting a prisoner from gaol to be present at the Coroner's court. In a county of small superficial extent, such as Middlesex, the inconvenience to which I allude, although it might often be serious, would not be so oppressive as in a large county. But let us take, by way of illustration, the case of a murder committed at a small village in a remote part of a large county. The accused is taken before a neighbouring magistrate, who commits him to the county gaol, which may be distant fifty miles. He is no sooner safely disposed of in the county gaol than the gaoler is required to send him back again to the place where the death occurred, in order that he

* Dalton's Justice, p. 472; 3 Coke's Rep. 44, a.; 1 Hale's Pleas of the Crown, p. 597.

may attend the Coroner's inquest. He is there detained until the jury have given their verdict, which may not happen until after a protracted inquiry extending over several days. During the whole of this interval, he must be confined at the village alehouse or some place equally unfit for the safe custody of a prisoner. Finally, he is to be sent back again to the distant gaol. It appears to me that this course of dealing with a prisoner charged with a capital crime is full of danger. The expence of sending him about the country in the manner I have described is a matter of minor consideration; but the dangers of escape,—of violence and bloodshed in desperate attempts at rescue from a custody of doubtful legality,—of perverting justice by furnishing facilities of corrupting witnesses and of communicating with and instructing accomplices, are imminent and obvious, and of so serious a character that they ought not to be incurred unless the prospect of a counterbalancing advantage is clear and unequivocal.

From the preceding remarks it appears, I think, that there are grave legal objections to the production of accused persons before the Coroner's inquest in the character of *parties*. But it has been contended that if they are not produced as parties, it is often necessary for the ends of justice that they should appear before the inquest for the purpose of being identified by the witnesses, so that the jury may be enabled to return their verdict against an

individual by name. But surely it is a fallacy to suppose that for the purpose of identifying a party by evidence it is necessary to produce him corporeally before the jury, in order that they may see with their own eyes his recognition by the witnesses. The identification of parties by testimony takes place every day, and in all courts—criminal as well as civil; but the process by which this is effected is not by exhibiting the party to the witnesses in court, but by sending the witnesses to see the party wherever he may happen to be, and then taking their evidence as to his identity. The law of England is far too scrupulous respecting personal liberty, to allow men to be arrested and imprisoned in order that they may be subjected to the experiment of a recognition in court by witnesses; and it is manifestly more consistent with reason and justice that the question of identity should be settled before a man is arrested, than that he should be taken into custody upon the chance of being subsequently identified. Nor is there the least occasion for a different practice where the party is already in custody; whether he be in gaol, or in the hands of the police, or before a magistrate,—the witnesses can always have access to him for the purpose of ascertaining his identity by personal inspection, and thus enabling them to connect him by name with the transaction to which their testimony is applied.*

* This seems to have been the view taken of this point by the Court of Queen's Bench upon refusing the application for a writ

Again, it is said to be contrary to justice to examine witnesses in a criminal inquiry in the absence of the party who may, by the result of that proceeding, be found guilty of a grave offence. This argument obviously proceeds upon an assumption, the fallacy of which I have above attempted to illustrate, namely, that there is any person distinctly ascertained as a suspected and accused person before the jury have accused an individual by their verdict. But the answer to the argument will be suggested by a consideration of the true character and object of the Coroner's inquisition. The whole institution, so far as it relates to the presentment of crimes, arose precisely as the machinery of grand juries has arisen, from the jealousy of personal liberty which has existed in this country from very early times, and which took care that the executive power should lay hold suddenly or arbitrarily upon no man. With this object our ancestors, before the establishment of justices of the peace, provided not only that a man should not be condemned or punished, but that he should not be arrested or imprisoned without the declaration of a jury against him. He must be (in the language of antiquity) *malé creditus per patriam*, and the *patria* were represented for the purpose of accusation by a jury. Upon this principle it was that the Coroner's inquest and the grand jury accused, or in more technical lan-

of Habeas Corpus, made in last Trinity Term, *In the matter of an Inquest on* Hannah Moore, *deceased*.

guage presented, or indicted, persons suspected of crimes by the neighbourhood in which they were committed.* Between the functions of these two institutions, as tribunals of accusation in cases of homicide, no material distinction exists. The grand jury accuse by their "true bill" of indictment which they present to the court; and then, unless the accused is already in custody under a magistrate's commitment, process issues against him, upon which he is arrested and brought into court for trial. In like manner the Coroner's jury accuse by their verdict; the Coroner then causes the accused to be arrested and imprisoned in order that he may be forthcoming when the accusation is presented to a higher court, before which he is to answer. Historically speaking, the two modes of proceeding seem to have been originally one; at all events they sprung from the same reason and principle; and the chief difference be-

* The "Jury d'Accusation," which existed in France previously to the introduction of the Code d'Instruction Criminelle in 1809, was an institution of a similar nature, and arose from similar views respecting personal liberty, introduced at the period of the French Revolution. As soon as the despotic principle in France had gained sufficient power over the democracy of the Revolution, the functions of the "Jury d'Accusation" were transferred to a section of the Cour Impériale, now the Cour Royale, who were called the chamber "des mises en accusation," and who decided whether the proofs of the imputed crime laid before them by the Procureur-Général were sufficient to subject the person suspected to a formal charge. This alteration, of course, changed the fundamental character of the institution; but the ancient Jury d'Accusation was precisely analogous to our Grand Jury and Coroner's Inquest.

tween them at the present day is, that the grand jury is assembled expressly for the purpose of accusation; whereas, the Coroner's inquest is primarily a proceeding of inquiry, embracing a variety of objects, and only incidentally and collaterally becoming a proceeding of criminal accusation. Both are essentially *ex parte* proceedings; and consequently a verdict against an individual in either of them is merely and simply an accusation, the declaration of the jury being precisely equivalent to the decision which by the law of France is expressively designated by the term "la mise en accusation."* It is nothing more than a presumption of guilt which the party accused is afterwards to have an opportunity of removing; it concludes no fact against him, but leaves everything open for discussion and proof before the court which is authorized to try definitively the truth of the accusation, and to condemn or deliver him. It is not in any respect a penal proceeding, and no punishment can directly result from it; and the only substantial prejudice that can arise to a person against whom such a verdict is given is, that he should be temporarily deprived of his liberty

* It is perhaps worthy of remark, that the accused is expressly excluded from the chamber "des mises en accusation" by the French law,—"parceque l'examen de la chambre d'accusation n'est qu'un acte préparatoire, qui a pour objet de reconnaître la gravité des indices, et non d'apprécier définitivement les preuves. La chambre des mises en accusation ne fait, en effet, que préparer la décision définitive du jury."—Rogron, Code d'Instruct. Crimin. Art. 223.

in order that he may be secured for future trial. Upon a preliminary examination of this kind, whether it be by a grand jury or a Coroner's inquest, the attendance of the party against whom it is presumed that an accusation may arise would be inconsistent with the character and object of the proceeding, by rendering it a trial instead of an inquiry. Justice and common sense require that the accused should be present when tried; but there is not the same necessity, and it would be always useless, often impolitic, and sometimes impossible, that he should be present when accused.

Of course, I shall not be understood as arguing against the voluntary presence of a person at the Coroner's inquest, respecting whom accusatory evidence has been given, or is apprehended. It is true, that the Coroner's court is not an open court,—that is, the Coroner has a discretion in this respect, and persons not connected with the proceedings cannot, by law, insist upon being present as a right. Nevertheless, for all practical purposes, it is an open court; and if a person against whom criminatory evidence has been given, were voluntarily to appear, and tender proof to the inquest in exculpation of himself, the Coroner would not only be justified in allowing such proof to be given, but he would act in direct defiance of the law if he refused to do so. Lord Hale expressly says that, "the offender himself shall be received to plead Not Guilty before the Coroner;" and in another passage he adds, "I do

conceive the Coroner's inquest ought, in all cases, to hear the evidence upon oath, as well as that which maketh for, as that which maketh against, the prisoner, and the whole evidence ought to be returned with the inquisition."* And in Scorey's Case,† the Court of King's Bench directed a Coroner to show cause why an information should not be filed against him, for refusing to hear evidence on behalf of an accused person. It is clear, therefore, from these authorities, that a suspected or accused person may, if he pleases, appear before the Coroner's inquest, and repel at once, both by evidence and explanation, the presumptions of guilt which may have been raised against him; and I can conceive cases in which, upon the application of a party actually in gaol, under a magistrate's warrant, either for further examination, or a final commitment, the Courts of Westminster Hall would direct his removal by Habeas Corpus to attend the Coroner's inquest. But this is not the point contended for on recent occasions; the claim insisted upon was the production of the accused at all events, and in whatever custody, before the inquest for examination, and wholly without respect to his consent or inclination.

Presuming then that the Coroner is not at present authorized by law to call before his jury persons suspected of culpable homicide, the question

* Hale's Pleas of the Crown, vol. i. p. 415, vol. ii. p. 62; see also Barclee's Case, Siderfin's Reports, vol. ii. pp. 90, 101.

† Leach's Crown Law Cases, vol. i. p. 43.

arises whether it would promote the proper objects of criminal justice, that such an authority should be expressly given him by the legislature. In a matter which does not interfere with private interests, and in which no strong prejudices or party feelings are involved, a really useful enlargement of the Coroner's jurisdiction would probably be sanctioned by public opinion, and would meet with no opposition in Parliament; and a statute of a few lines might expressly give the required authority, and effectually remove the legal impediments above suggested. But is it necessary or expedient for the attainment of the objects of criminal law, that Coroners should possess the power of compelling persons suspected or accused of homicide to come before their inquests? Although the chief object of the foregoing remarks has been to show that the authority which has been claimed, had no legal existence in ancient times, and does not at present exist, some of the arguments employed for that purpose tend incidentally to prove the negative of this question. I have only now to add a few words more directly in support of the opinion which I venture to entertain, that it is neither necessary nor expedient to increase the power of the Coroner in this respect.

In the first place, it appears to me that any alteration of the law in this respect is unnecessary, inasmuch as the existing machinery for preliminary inquiry is competent to attain all the objects of this department of the administration of the criminal

law. These objects are, to secure the person of the supposed offender, to examine him and those who charge him, and to enforce the attendance of the witnesses at the future trial. Expressly for the attainment of these objects, justices of the peace have for centuries been invested with ample powers, which have been from time to time extended and modified by various statutes, so as to render them more effectual and to adapt them to the changing circumstances of the times. The number of justices of the peace has also been largely increased to meet the exigencies of an increased population. Whether the institution of justices of the peace is the best and most convenient which could be devised for the purpose, is a point upon which different opinions may be entertained, and which might be advantageously discussed upon a proposition to form a new system of criminal judicature; but it is beyond all contradiction that there already exists in England a machinery expressly designed and constructed for the attainment of the objects of preliminary procedure, and which does in fact attain those objects.

I observe, in the second place, that the effect of adding to the Coroner's authority in this point, would be to except from the general course of criminal procedure a single and very small class of crimes, having no special incidents to require or justify such an exception. The Coroner's jurisdiction extends to the investigation of two

offences only,—now happily of rare occurrence,—namely, murder and manslaughter; whereas the authority of justices of the peace is quite general, including homicide, and extending to all crimes known to the law of England, whether they belong to the class of felony or of misdemeanour. It appears from the useful Tables of Offenders compiled by Mr. Redgrave at the Home Office, and published annually by authority of the Government, that during the last ten years the crimes of murder and manslaughter, have averaged about 1 in 90 of the gross amount of offences examined into by justices of the peace in England and Wales; that is to say, the cases of murder and manslaughter have amounted annually upon the average of ten years, to 280, while the aggregate annual amount of all the crimes which have been investigated by magistrates, has been upwards of 25,000. So that the proposition is to increase the effectiveness of the present mode of preliminary examination with reference to the small fraction of 280 out of 25,000 offences, When it is borne in mind that as to the whole 25,000 cases an effective mode of examination already exists, the practical object to be attained by the proposed alteration is really too inconsiderable to be deserving of attention. Nor can it be said that there is anything peculiar in the character or incidents of the only crimes subject to the Coroner's jurisdiction, or any special difficulty in their investigation, which renders it

expedient for the ends of justice, that they should be made an exception to the general rule, and subjected to two tribunals of preliminary examination instead of one. They are no doubt crimes which affect the life of man, and are therefore of a grave description, but the investigation of the facts which designate the offender, must be conducted by precisely the same rules as govern the inquiry into any other crimes.

Upon the whole, I am quite unable to perceive in what manner the ends of justice would be in any degree promoted by conceding to Coroners the additional power which has been claimed. With respect to securing the person of the offender, no advantage can possibly be attained. Any private person, or any constable with or without a warrant, may arrest a person suspected of felony and take him before a magistrate. The Coroner himself, without an inquest, may commit him to gaol under the present law. In this respect, therefore, no additional advantage would be obtained by producing the accused before the inquest. For it cannot be seriously contended, that the duty of directing and superintending the constable in the discovery of offenders (which has occasionally been assumed by Coroners) can be effectively discharged by the Coroner and his inquest. In London, the Commissioners of Police, having the disposal of an organized force in constant communication throughout the whole metropolitan district, and acting with unity,

secrecy, and promptitude, must surely be better qualified for the discovery of crimes than the Coroner with his cumbrous machinery of a jury, the publicity of his proceedings, and his frequent and necessary adjournments. Still less can it be contended, that it would be a convenient course for a police constable who has arrested an offender to take his prisoner to the Coroner, who cannot deal with him until he has assembled his jury, who can only sit occasionally and for a few hours at a time, and then usually at some obscure and distant public-house, instead of bringing him at once to one of the police-courts, which are open for seven hours at least every day, and are distributed over the whole metropolitan police district. In the country, indeed—at least in those counties in which no improved system of rural police has been adopted under the late statute—the local magistrate is charged with the duty and responsibility of directing and aiding the constable in the detection and apprehension of offenders. But those who have compared the mode in which the duties belonging to this branch of criminal procedure are generally performed by country magistrates with the ignorance and carelessness often displayed by country Coroners in discharging the duties already attached to their office, will not be disposed to believe that offenders will be brought to justice with more certainty by enlarging the powers of the latter officers. I do not, however, rely upon the personal inca-

pacity of Coroners, although it is notorious that, in many parts of the country, the office is frequently held by incompetent persons. On the contrary, I have no doubt that the reproach of Mr. Justice Blackstone, that "the office has been suffered to fall into disrepute, and to get into the hands of low and indigent persons, who have only desired to be chosen for the sake of their perquisites,"* is much less true at the present day than it was at the time when the Commentaries were written. But my objection is to any enlargement of the institution itself in this direction, because it appears to me that such a tribunal as the Coroner's inquest is incapable, from its nature and constitution, of directing with effect the operations of a detective police.

From separate examinations of a prisoner by the justice of the peace and the Coroner, no advantage can accrue to the ends of justice, and much inconvenience and needless vexation may be occasioned. As the legitimate objects of the examination of a prisoner may be obtained by his appearance before a magistrate, and his commitment by him for trial, what good purpose can be gained by subjecting him to a second examination before the Coroner, and a second commitment by him? If the result of the Coroner's examination should be the exoneration of the person committed by the magistrate, and a verdict against some other person, the

* Blackstone's Commentaries, vol. i. p. 347.

individual in custody under the magistrate's commitment would not be thereby discharged from prison, nor exempted from the jurisdiction of the grand jury; and if the verdict of the inquest should agree with the magistrate's decision, the Coroner's commitment of a man already in safe custody would of course be entirely superfluous. On the other hand, it is obvious that the just determination of the facts upon the trial may be seriously embarrassed and endangered by conflicting decisions of the preliminary tribunals.

But a still more serious inconvenience, amounting to positive injustice, would arise from the prejudice which would necessarily be created against the prisoner on his trial, from the circumstance that a verdict had already passed against him in a proceeding at which he was personally present, and had an opportunity of making a full defence. By the present law, the presentment of the grand jury and the verdict of the Coroner's inquisition being the result of *ex parte* proceedings, in the absence of the party charged, are merely formal accusations, and raise only a slight shade of presumption against him,—so slight indeed, as not to amount in practice to a prejudice which can be injurious to the accused on his trial. In like manner, the commitment by a magistrate for trial takes place upon *ex parte* evidence, and occasions no serious prejudice to the prisoner. But if an accused person has been brought before the Coroner's court, has heard

the evidence against him, has had an opportunity of cross-examination, has been called upon to make a statement, and invited to examine witnesses in his defence, he has undergone all the process of a full trial; and a verdict of guilty pronounced by a jury after such a hearing, would constitute what the law calls a "vehement" presumption against him. The trial of a person by another jury, and in another court, upon an inquisition taken with such opportunities for defence, would be little more than a solemn form. It would resemble an appeal from the former verdict, much more than a trial; and without ascribing to jurors a much greater power of abstraction than experience shows them to possess, it cannot be supposed that they could by possibility divest their minds of the overpowering prejudice raised against the accused by the previous decision.

Although for the reasons above stated, I think that no advantage would be gained by enabling Coroners to enforce the attendance of accused persons before their inquests, I do not concur in the opinion which has of late become prevalent—that the Coroner's jurisdiction, in cases of homicide, is an useless piece of machinery. Inquiries by means of juries were, perhaps, more consistent with the state of society in the reign of Edward I. than with the habits and manners of the present day. At the same time it must be admitted, that by the presence of a jury a certain degree of publicity is in-

sured, and a check is provided against corruption or other misprision on the part of the Coroner. That an officer should exist, whose peculiar duty it is, by virtue of his office, and without being put in motion by any superior power, or waiting for special directions in each particular case, to go at once to the spot where a man has been slain, or is suddenly dead, and to investigate the causes of the death while the fact is recent, appears to me to be, at all times, and in all states of society, a wise and useful provision. Under different names, and with different modifications, such an institution is found in all the best systems of police on the Continent; and it is obviously valuable, not only as aiding in the detection of crime, but in its prevention, by holding out the certainty of an immediate and searching inquiry upon the occurrence of every sudden or suspicious death. But then the inquiry should be strictly limited to the object described in the ancient forms of proclamation, namely, "When, how, and in what manner, the person there lying dead came by his death?" When this limit is exceeded, when the Coroner takes upon himself to send for parties accused or suspected,—to ask them questions or record their statements, or to assume in any respect the functions of a detective police, he will undoubtedly embarrass and impede, instead of forwarding, the administration of justice.

THE END